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5                   **UNITED STATES DISTRICT COURT**  
6                   **EASTERN DISTRICT OF WASHINGTON**

7                   **KEYSTONE FRUIT MARKETING,**  
8                   **INC., and BOB N. EVANS ,**

9                   Plaintiffs,

10                  v.

11                  **WILLIAM G. BROWNFIELD;**  
12                  **JANET H. BROWNFIELD; and**  
13                  **JANET M. CLAYTON,**

14                  Defendants and Cross-  
15                  Plaintiffs,

16                  v.

17                  **WALLA WALLA RIVER**  
18                  **KEYSTONE, LLC; WALLA**  
19                  **WALLA RIVER FARMS, LLC,**

20                  Third-Party  
21                  Defendants.

22                  NO. CV-05-5087-RHW

23                  **ORDER DENYING**  
24                  **DEFENDANTS' MOTION FOR**  
25                  **RECONSIDERATION;**  
26                  **GRANTING DEFENDANTS'**  
27                  **MOTION TO ENFORCE AWARD**  
28                  **IN ARBITRATION, IN PART**

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30                  Before the Court are Defendants' Motion for Reconsideration (Ct. Rec. 390)  
31 and Motion to Enforce Award in Arbitration (Ct. Rec. 395). Additionally,  
32 Plaintiffs filed a Notice of Presentment of Arbitration Award (Ct. Rec. 399) and  
33 Notice of Proposed Judgment (Ct. Rec. 389). These motions were heard without  
34 oral argument.

35                  On May 5, 2008, the Court entered Findings of Facts and Conclusions of  
36 Law (Ct. Rec. 388). The Court found that Defendant William Brownfield breached  
37 his duty of loyalty and tortiously interfered with a business relationship. The Court  
38 awarded Plaintiffs \$145,719.60 in damages for the breach of duty of loyalty claim,

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40                  **ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATION;**  
41                  **GRANTING DEFENDANTS' MOTION TO ENFORCE AWARD IN**  
42                  **ARBITRATION, IN PART ~ 1**

1 and \$537,434.05 in lost profits for the tortious interference claim.

2 **1. Defendants' Motion for Reconsideration**

3 On May 14, 2008, Defendants filed a Motion for Reconsideration. The basis  
 4 for Defendants' motion is that "this court is bound by the determination of the two  
 5 (2) prior hearing examiners, and that the court is not permitted to make different  
 6 findings than were made by the prior arbitrators who heard the same witnesses and  
 7 the same facts." (Ct. Rec. 401).

8 "[A] motion for reconsideration should not be granted, absent highly unusual  
 9 circumstances, unless the district court is presented with newly discovered  
 10 evidence, committed clear error, or if there is an intervening change in the  
 11 controlling law." *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890  
 12 (9th Cir. 2000) (quoting *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 665  
 13 (9th Cir. 1999)). It is considered an "extraordinary remedy, to be used sparingly in  
 14 the interests of finality and conservation of judicial resources." *Id.* A motion  
 15 under Rule 59(e) "may *not* be used to raise arguments or present evidence for the  
 16 first time when they could reasonably have been raised earlier in the litigation." *Id.*  
 17 (emphasis in original).

18 Here, Defendants have not presented the Court with newly discovered  
 19 evidence, nor is there an intervening change in the controlling law. Thus, it  
 20 appears that Defendants are arguing that the Court committed clear error,  
 21 presumably by making its own credibility determinations and failing to defer to the  
 22 arbitrator's decisions. However, even if this were true, which the Court does not  
 23 so find, such an argument could have reasonably been raised earlier in the  
 24 litigation. Moreover, the Court does not find that the doctrine of collateral  
 25 estoppel or *res judicata* apply in this case.

26 In determining whether *res judicata* applies, the Court looks at: (1) whether  
 27 rights or interests established in the prior judgment would be destroyed or impaired  
 28

**ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATION;  
 GRANTING DEFENDANTS' MOTION TO ENFORCE AWARD IN  
 ARBITRATION, IN PART ~ 2**

1 by prosecution of the second action; (2) whether substantially the same evidence is  
2 presented in the two actions; (3) whether the two suits involve infringement of the  
3 same right; and (4) whether the two suits arise out of the same transactional  
4 nucleus of facts. *Clark v. Bear Stearns & Co.*, 966 F.2d 1318, 1320 (9<sup>th</sup> Cir. 1992).  
5 None of these factors are present in this case. The entities before the arbitrators  
6 were not involved in the bench trial. Whether Defendant Brownfield owed any  
7 fiduciary duties to Walla Walla Keystone, LLC and Walla Walla River Farms,  
8 LLC does not control whether Defendant Brownfield owed a duty of loyalty to  
9 Keystone Fruit Marketing, Inc. As such, Defendant's Motion for Reconsideration  
10 is denied.

11 **2. Defendants' Motion to Enforce Award in Arbitration**

12 Defendants filed a motion asking the Court to enforce the arbitration award,  
13 but failed to file a proposed judgment. Plaintiffs also ask the Court to enforce the  
14 arbitration award and filed a proposed judgment. Defendants did not object to the  
15 proposed judgment and the Court finds that it accurately sets forth the arbitration  
16 award. As such, the Court will direct the District Court Executive to enter  
17 judgment consistent with the amounts awarded in the arbitration proceedings.

18 The parties disagree, however, whether the Court should award prejudgment  
19 interest. Under Washington law, prejudgment interest is allowed (1) when an  
20 amount claimed is "liquidated," or (2) when the amount of an "unliquidated" claim  
21 is for an amount due upon a specific contract for the payment of money and the  
22 amount due is determinable by computation with reference to a fixed standard  
23 contained in the contract, without reliance on opinion or discretion. *Prier v.*  
24 *Refrigeration Engineering Co.*, 74 Wash. 2d 25, 32 (1968).

25 Here, the Court finds that the lost profits and damages for breach of duty of  
26 loyalty are unliquidated and therefore not subject to prejudgment interest.

27 Accordingly, **IT IS HEREBY ORDERED:**

28 **ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATION;  
GRANTING DEFENDANTS' MOTION TO ENFORCE AWARD IN  
ARBITRATION, IN PART ~ 3**

1       1. Defendants' Motion for Reconsideration (Ct. Rec. 390) is **DENIED**.

2       2. Defendants' Motion to Enforce Award in Arbitration (Ct. Rec. 395) is  
3 **GRANTED**, in part.

4       3. The District Court Executive is directed to enter judgment in favor of  
5 Plaintiff Keystone Fruit Marking, Inc., and against William Brownfield,  
6 individually, and the marital community of William G. and Janet H. Brownfield, as  
7 follows:

- 8           • For breach of an employee's fiduciary duty of loyalty in the amount of  
9           \$145,719.60;
- 10          • For intentional interference with business expectance in the  
11           amount of \$537,434.05.

12       4. The District Court Executive is directed to enter judgment in favor of  
13 William G. and Janet H. Brownfield and against Walla Walla Keystone, LLC, as  
14 follows:

- 15           • For valuation of Mr. Brownfield's interest in the company in the  
16           amount of \$322,823.

17       5. The District Court Executive is directed to enter judgment in favor of  
18 William G. Brownfield and against Walla Walla Keystone, LLC, as follows:

- 19           • For attorneys' fees and costs incurred in the arbitration in the amount  
20           of \$36,122.36.

21       6. The District Court Executive is directed to enter judgment in favor of  
22 Walla Walla Keystone, LLC, and against William G. and Janet H. Brownfield,  
23 jointly and severally, as follows:

- 24           • For computer forensic costs in the amount of \$47,124.66.

25       7. The District Court Executive is directed to enter judgment in favor of  
26 Walla Walla Keystone, LLC, and Walla Walla River Farms, LLC, and against  
27 William G. and Janet H. Brownfield, jointly and severally, as follows:

28 **ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATION;  
GRANTING DEFENDANTS' MOTION TO ENFORCE AWARD IN  
ARBITRATION, IN PART ~ 4**

- For attorneys' fees and costs incurred to compel arbitration in the amount of \$10,374.00.
  - For attorneys' fees and costs incurred in the arbitration in the amount of \$48,018.50.

**IT IS SO ORDERED.** The District Court Executive is directed to enter this Order and forward copies to counsel.

**DATED** this 18<sup>th</sup> day of June, 2008.

S/ Robert H. Whaley

**ROBERT H. WHALEY**  
Chief United States District Judge

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**ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATION;  
GRANTING DEFENDANTS' MOTION TO ENFORCE AWARD IN  
ARBITRATION, IN PART ~ 5**